

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 871 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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MAHMAD JAFAR @ ANNO MAHMAD HANIF SAIYAD

Versus

DISTRICT MAGISTRATE

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Appearance:

MS DR KACHHAVAH for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 27/03/2000

ORAL JUDGEMENT

1. The District Magistrate, Bharuch, passed d an order on May 26, 1999, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner-Mohmad Jafar @ Anno Mahmad Hanif Saiyad of Bharuch under the provisions of the said Act.

2. The detaining authority took into consideration two registered offences against the detenu besides

statements of two anonymous witnesses recorded on April 3 and April 6, 1999. The detaining authority came to conclusion that the detenu is a bootlegger and is required to be detained under the PASA Act in order to immediately prevent him from pursuing his illegal and anti-social activities. The authority observed that resorting to less drastic remedy is not possible and may not prove to be so efficacious as detention under the PASA Act.

3. The petitioner/detenu challenges the order of detention on various counts. However, Ms. Kachhavah, learned advocate for the petitioner, has restricted her arguments to the ground of delay in passing the order. She submitted that the statements of anonymous witnesses were recorded by the proposing authority on April 3 and April 6, 1999, which were verified by the Dy.S.P., Bharuch on April 12, 1999. The detaining authority, i.e. the District Magistrate, Bharuch, verified the statements on May 4, 1999 and the order is passed on May 26, 1999. Ms. Kachhavah, therefore, submitted that there is a delay of 22 days from the date of verification by the detaining authority. The delay is not explained. The delay, having remained unexplained, would vitiate the genuineness of the satisfaction recorded by the detaining authority for the need for exercise of these powers. She, therefore, submitted that the petition may be allowed.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition.

5. It is clear, on perusal of the record that the statements of anonymous witnesses were recorded on April 3, and April 6, 1999. The said statements were verified by the detaining authority on May 4, 1999 and the order was passed on May 26, 1999. Even if the date of verification is considered, the order is passed after a lapse of about 22 days. This unexplained lapse/delay in passing the order will have a direct bearing on the genuineness of the subjective satisfaction recorded by the detaining authority for the need for exercise of powers under the PASA Act. The authority has observed in the grounds of detention that the petitioner is required to be detained under the PASA Act for immediately preventing him from pursuing his activities which are detrimental to public order. The outcome is that the order is passed on a subjective satisfaction which cannot be said to be genuine, but only verbal. If the satisfaction was genuine, there would not have been so much of delay in passing the order and in absence of any

explanation coming from the detaining authority by way of an affidavit or otherwise, no concession can be given for the delay. The delay has vitiated the order of detention and, therefore, the petition deserves to be allowed.

6. In view of the above discussion, the petition is allowed. The impugned order of detention dated May 26, 1999 passed against the detenu is hereby quashed. The detenu-Mahmad Jafar @ Anno Mahmud Hanif Saiyad is ordered to be released forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[ A.L. DAVE, J. ]

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